

PUBLIC NOTICE
Montgomery County
Notice of Open Solicitation
Road Equipment Services
Open Solicitation # 8506010002

Montgomery County, Maryland through its Department of Transportation, for the Division of Highway Services, is seeking applications from Contractors under Section 4.1.6 of the Montgomery County Procurement Regulations, COMCOR 11B.00.01, et seq., titled "Open Solicitation", to provide equipment services to the County during an emergency and at other times as determined by the needs of the County.

Interested parties should contact the Division of Highway Services 240-777-6000 to obtain a copy of the Open Solicitation. An Open Solicitation packet containing a contract application form and pre-approved form contract will be provided to interested parties who wish to apply to provide these services.

The County does not guarantee any minimum amount of work to any applicant who qualifies for a contract to provide these services to the County.

The County reserves the option to cancel this Open Solicitation at any time. Award of a contract under this Open Solicitation is subject to fiscal appropriations.

Should you have any questions about this solicitation please contact the Division of Highway Services at 240-777-6000.

(Remainder of Page Intentionally Left Blank)

MONTGOMERY COUNTY, MARYLAND
DEPARTMENT OF TRANSPORTATION
DIVISION OF HIGHWAY SERVICES
OPEN SOLICITATION FOR ROAD EQUIPMENT SERVICES
Open Solicitation # 8506010002
VENDOR INFORMATION FORM

The County will enter into a contract with all applicants who meet the pre-established minimum qualifications approved by the Department of Transportation, submit a copy of a valid and conforming certificate of insurance, and return the Pre-Approved Form Contract signed as written. If approved, the County will execute the contract and return a fully executed contract to the Contractor. This Vendor Information Form, the Notice of Open Solicitation, the Contractor's application and the Pre-Approved Form Contract with Attachments A, B, C, D, and E constitute the entire Contract.

Questions related to this Open Solicitation should be directed to Mr. Lew Cutsail, Chief Support Services Unit, 240-777-7634, e-mail: Lew.Cutsail@montgomerycountymd.gov

I. INTENT

The intent of this Open Solicitation is to establish a list of qualified Contractors that agree and are able to supply equipment and personnel, at predetermined and agreed upon rental rates to the County. The rates will be established on a two (2) tier basis; an emergency rate to be used for an emergency round the clock operation and a regular rate for use at times other than during an emergency. The current rates are set forth on Attachment A of the Pre-Approved Form Contract.

An emergency is defined by the County as a storm event or series of events in which the County determines additional resources are required to re-establish safe passage to the general public on County streets and roads.

Applicants awarded contracts under this Open Solicitation are not required to reserve any equipment for the exclusive use of Montgomery County. Applicants awarded contracts under this Open Solicitation will be required to provide equipment at the rates stated in Attachment A of the Pre-Approved Form Contract if the equipment is available when the County notifies the Contractor of its needs.

This Open Solicitation does not guarantee that any applicant awarded a contract under this Open Solicitation will be required during any storm event or any other event, as determined by the County, to provide equipment to the County but only pre-establishes prices for rental of various types of equipment, supplies and personnel.

II. MINIMUM QUALIFICATIONS

To be eligible for Contract Award, the Applicant must:

Meet the County's, mandatory insurance requirements as defined under this Open Solicitation and as outlined in the Pre-Approved Form Contract and must provide a conforming insurance certificate(s) as proof of insurance.

Have the ability and capacity to provide equipment and/or labor as defined in this Open Solicitation and as outlined in the Pre-Approved Form Contract.

Meet any Federal, State, or Local licensing requirements that may be necessary to perform work as specified under this Open Solicitation.

PRE-APPROVED FORM CONTRACT
OPEN SOLICITATION #8506010002
ROAD EQUIPMENT SERVICES

ARTICLE I. BACKGROUND

The purpose of this Contract is to provide ready sources of supply for rental of a wide variety of construction equipment including types of equipment commonly used in construction and/or used in the maintenance of roads, and tree maintenance. It is anticipated by the County that such rentals may be needed for emergency services for extended periods of time with the County being able to supply only short notice to the Contractor.

The Parties acknowledge that it would be impossible to outline in detail the anticipated frequency that equipment may be required pursuant to this Contract. However, in the past several years, the County has had occasion for rental of each type of equipment listed herein in Attachment A. This Contract will be considered a "requirements-type" contract only. Montgomery County makes no guarantee of any kind regarding the volume of rentals required of the Contractor or the total value of this Contract. In addition, all rentals by the County are contingent upon the appropriation and encumbrance of funds for the purposes described in this Contract.

ARTICLE II. CONTRACT TERM

The term of the Contract is from the date of signature by the Director, Office of Procurement through June 30, 2009.

ARTICLE III. DESIGNATED CONTRACT ADMINISTRATOR

The designated Contract Administrator for this Contract is Lew Cutsail, Chief, Support Services Unit, Division of Highway Services, Department of Transportation.

ARTICLE IV. NOTIFICATION AND ASSIGNMENT DISTRIBUTION

Upon execution of Contracts awarded under Open Solicitation # 8506010002 (the "Solicitation"), the County will compile a list of Contractors and the equipment they offered to provide in response to the Solicitation. The list of Contractors will be compiled according to the date of contract execution.

The County, upon determining that additional equipment is needed to complete the clearing of County streets and roads during an emergency or at other times as determined by the needs of the County, will call Contractors from the list to determine what equipment and services are available. The County will start with the first contractor on the list who has the equipment and personnel services needed by the County, if that contractor is unable to meet the County's needs at the time the County requests equipment and services, the County will proceed to the next contractor on the list until the County finds a contractor able to meet its needs. For subsequent needs, the County will begin the process described above, beginning where the County left off on the list.

Based upon the County's needs, and the availability of the Contractor's equipment and personnel services, the Contractor will be dispatched to various locations, within Montgomery County, as determined and instructed by the Contract Administrator.

Note: The Contractor shall be responsible for any damage to County and/or Public property by his equipment due to careless and/or negligent operation by his personnel.

ARTICLE V. SCOPE OF WORK

A. MOBILIZATION FOR EMERGENCY SERVICE

Upon notification by the County to the Contractor, the Contractor will have two (2) hours to mobilize personnel and equipment and report to the locations assigned by the County. The Contractor will be paid by the County, at the standby rate during this two hour time period.

If for any reason equipment and personnel cannot report to their assigned location(s) during this two-hour window the Contractor must notify the County Representative of such time delay.

FAILURE TO NOTIFY THE COUNTY REPRESENTATIVE OF A DELAYED ARRIVAL OR FAILURE TO ARRIVE AT AN ASSIGNED LOCATION WILL RESULT IN A PENALTY OF 150% OF THE OPERATING HOURLY RATE FOR EACH PIECE OF EQUIPMENT THAT FAILS TO ARRIVE. THE PENALTY WILL BEGIN AT THE END OF THE TWO HOUR PERIOD AND CONTINUE FOR EACH HOUR OR PORTION THEREOF UNTIL THE COUNTY

IS NOTIFIED OR THE END OF THE EMERGENCY. THE CONTRACTOR WILL BE BILLED FOR THESE CHARGES, OR IF ANY MONEY IS DUE THE CONTRACTOR THESE CHARGES WILL BE DEDUCTED FROM THE MONIES DUE.

B. REQUIREMENTS FOR EMERGENCY SERVICE

All services supplied under the terms of this Contract must be in full conformity with all Federal, State of Maryland and Montgomery County laws and regulations.

All equipment supplied must be in good working order. The equipment must be provided with sufficient lights to provide a high degree of illumination for the operator and the following:

- A flashing beacon or safety light assembly mounted on the vehicle in a highly visible location
- A light mounted on the rear of the vehicle or sander which will illuminate the roadway where that material is being applied.
- An "ADC" map book and working cell phone or other means of communication with the County supervisor.
- A kit which contains basic tools and supplies to facilitate minor repairs that can be made on the road with minimal lost of operating time. Examples of what should be included would be tape, spark plug for sanders, gas can, fuses, flashlight, hammer, pliers, adjustable wrench, etc.

The County reserves the right to reject or terminate the use of any equipment that appears mechanically unsound, unsafe or is inadequate, in the opinion of the County, to perform the task assigned.

All equipment provided by the Contractor must work continuously until released by the County Representative. The Contractor shall be allowed one (1) hour of down time per each twelve (12) hours work session for fueling, lubrication and to perform preventive maintenance. The Contractor must provide his own fuel and lubricants and all other required maintenance as part of the basic rental cost.

Once equipment is in service for the County the equipment must remain in service until released by the County. Any Contractor who prematurely discontinues service without the approval of the County representative shall be removed from the County call list. The Contractor must provide the County with adequate reasoning or justification, in the sole opinion of the County, for discontinued service to be reinstated to the call list. Should the Contractor fail to provide said justification or justification acceptable to the County in its sole discretion, the County may pursue termination of the Contract.

The operators of equipment supplied by the Contractor must be proficient in operation of the type of equipment they are assigned. The County reserves the right to terminate and request the replacement of any operator deemed by the County, in its sole opinion, to be insufficiently skilled or operating in an unsafe manner. Any equipment that is in non-operational condition must be removed by the Contractor from service unless otherwise approved by the County.

The Contractor must provide sufficient personnel to operate equipment around the clock while meeting the requirements of all applicable laws and regulations. The Contractor is responsible to coordinate the shift changes in such a manner that it does not interrupt emergency service operations.

The Contractor must promptly inform the County of any equipment breakdowns. Any equipment that breaks down must be taken out of service and the Contractor will be given two (2) hours at the standby rate to repair or replace it. After two (2) hours the equipment will be removed from pay status by the County.

When four (4) or more units of equipment are provided all equipment must have two (2) way communication abilities among themselves, mechanics, and supervisory personnel.

Once ten (10) pieces of equipment are supplied the Contractor must have a mechanic readily available with transportation to equipment sites. An additional mechanic will be required for each additional ten (10) pieces or fraction thereof. The Contractor will be paid at the flat rate price as shown on Attachment A for each mechanic.

Once ten (10) pieces of equipment are supplied the Contractor must have supervisory personnel, equipped with two way radios and cell phones, in the field monitoring the operations of their equipment and personnel. An additional supervisor will be required for each additional ten (10) pieces or fraction thereof. The Contractor will be paid at the flat rate price as shown on Attachment A for each supervisor. Upon reporting to the site the Contractor must provide name(s) and cell phone number(s) of supervisor(s) to the County.

All supervisors and mechanics must be proficient in English to communicate with County employees.

The Contract Administrator may waive the mechanic and/or supervisor requirements should condition warrant.

C. MOBILIZATION FOR NON-EMERGENCY SERVICE

Upon notification from the County the Contractor will have forty-eight (48) hours to mobilize personnel and equipment and report to locations assigned by the County. There will be no additional compensation payable to the Contractor by the County for mobilization for work performed under non-emergency service status.

For non-emergency service, the length of the rental time will be for a planned duration (days/weeks) as determined by the County. The County will advise the Contractor of assignment duration at the time of assignment.

Non-emergency service will be for no more than a 10-hour/ 6 day a week operation and will not include Sunday work.

D. REQUIREMENTS FOR NON-EMERGENCY SERVICE

All services supplied under the terms of this Contract must be in full conformity with all Federal, State of Maryland and Montgomery County laws and regulations.

All equipment supplied by the Contractor must be in good working order and equipped with the following:

- An "ADC" map book and working cell phone or other means of communication with the County supervisor.
- A kit which contains basic tools and supplies to facilitate minor repairs that can be made on the road with minimal lost of operating time. Examples of what should be included would be tape, spark plug for sanders, gas can, fuses, flashlight, hammer, pliers, adjustable wrench, etc.

The County reserves the right to reject or terminate the use of any equipment that appears in the sole discretion of the County to be mechanically unsound, unsafe or is inadequate to perform the task assigned.

The Contractor must provide its own fuel and lubricants and any other required maintenance as part of the basic rental cost.

Once equipment is in service for the County it must remain in service until released by the County. If the Contractor prematurely discontinues service without the approval of the County representative the Contractor shall be removed from the County's call list. The Contractor must provide the County with adequate reasoning or justification, in the sole opinion of the County, for discontinued service to be reinstated to the call list. Should the Contractor fail to provide said justification, or justification acceptable to the County in its sole discretion, the County may pursue termination of the Contract.

The Contractor's operators must be proficient in operation of the type of equipment they are assigned. The County reserves the right to terminate and request the replacement of any operator deemed by the County to be insufficiently skilled or operating in an unsafe manner. Any equipment that is in non-operational condition will be removed from service unless otherwise approved by the County.

The Contractor must promptly inform the County of any equipment breakdowns. Any equipment that breaks down must be taken out of service.

There will be no stand by or travel time pay provided for equipment supplied under non-emergency service.

If the County determines in its sole discretion that the equipment can not be operated because of adverse weather conditions (rain out) on a scheduled work day the Contractor will be paid a minimum daily rate of 4 hours, unless the County notifies the Contractor of the cancellation prior to the scheduled reporting time.

ARTICLE VI. INVOICES

The Contractor must submit itemized statements within 30 days after equipment and services are provided. These invoices must be on company letterhead and contain such detailed information as required by the Division of Highway Services to determine accuracy of the charges. The County will pay the Contractor in accordance with the rates listed in Attachment A, for the equipment and services delivered by the Contractor under this contract, within 30 days of receipt and acceptance of an invoice submitted by Contractor. The Contractor's charges must not exceed the amount stated on the County's Purchase Order. All invoices must contain the following attestation:

"I hereby certify this invoice correct for all work preformed and services rendered and that payment as indicated is due". This attestation must be signed and dated by the Contractor's contract manager.

All true and corrected invoices are to be sent to the Contract Administrator Attn: Lew Cutsail Department of Transportation, Division of Highway Services 101 Orchard Ridge Drive, 2nd Fl. Gaithersburg, MD 20878 (Phone 240-777-7634, Fax 240-777-7671)

All copies of invoices and all inquiries regarding payment must be directed to the above address. Failure to comply with this requirement may delay payment.

ARTICLE VII. GENERAL CONDITIONS

The General Conditions of Contract Between the County and Contractor (General Conditions) are attached and incorporated herein as Attachment B.

ARTICLE VIII. INSURANCE

The mandatory insurance requirements contained in Attachment C supersede those contained in paragraph 21 of Attachment B.

ARTICLE IX. MFD SUBCONTRACTOR PERFORMANCE PLAN

See attachment D.

ARTICLE X. WAGE REQUIREMENTS

See attachment E.

ARTICLE XI. PRIORITY OF DOCUMENTS

The following documents are attached hereto and incorporated herein by reference. The order of priority for purposes of resolving conflicts between the documents is: (1) This Contract document; (2) Attachment B – the County's "General Conditions of Contract Between County and Contractor" (Form PMMD 45, REVISED 1/06/05), (3) Attachment C – Mandatory Insurance Requirements, (4) Attachment D - MFD Subcontractor Performance Plan, (5) Attachment E – Wage Requirements, and (6) Attachment A – Equipment and Rental Rates.

Open Solicitation # 8506010002
Road Equipment Services

VENDOR APPLICATION FORM

Montgomery County, Maryland through its Department of Transportation, for the Division of Highway Services, is seeking applications from Contractors to Provide Road Equipment Services under Section 4.1.6 of the Montgomery County Procurement Regulations, COMCOR 11B.00.01 et seq., titled "Open Solicitation."

The requirements and rental rates for these services (if required by the County) are set forth in the attached Equipment and Rental Rates sheets.

Please supply the following information:

Contractors Name: _____
(Print or Type) - (Individual, Partnership, or Corporation)

Federal Taxpayer ID Number _____

Business Address: _____

City & State: _____ Zip: _____

Office Phone No. _____ Fax No. _____

Emergency Contact Person _____ Emergency Phone No. _____

(Corporate Officers Name)

(Partners Name)

Equipment List - Please provide a list of equipment that may be available for use during emergency and non-emergency operations, as defined in this Open Solicitation. The Division of Highway Services of the Department of Transportation will verify the usability of equipment contained in the vendor's equipment list prior to entering into a contract.

EQUIPMENT LIST

TYPE	MAKE	MODEL	YEAR	ACCESSORIES

If additional space is needed please attach list:

SUBMISSION DOCUMENTS - The following items must be submitted with your application:

1. Vendor Information Form.
2. Insurance Certificate. Contact your Insurance Broker to provide certification of insurance, which must meet the minimum requirements as stated on page XX of the Pre-Approved Form Contract.
3. Signature Page. The signing of an offer and the Pre-Approved Form Contract is a representation and certification by the person signing that the person signing is authorized to do so on behalf of the Contractor.
4. Minority, Female, Disabled Person Subcontractor Performance Plan -include pages D1-D6
5. Wage Requirements – Pages E1-E4
6. Application Form. Attach all of the above listed mandatory submissions; sign contract; return to:

Department of Transportation
Division of Highway Services
101 Orchard Ridge Drive, 2nd Floor
Gaithersburg, Maryland 20878
Attn: Lew Cutsail

ROAD EQUIPMENT SERVICES

This Contract which incorporates the Notice of Open Solicitation, the Pre-Approved Contract Form, and Attachments A, B, C, D and E by reference, copies of which have been provided to the Contractor, is entered into this _____ day of _____, 200____ by and between _____ hereinafter referred to as "Contractor" and Montgomery County, Maryland. This Contract will become effective on the date of signature by the Director Office of Procurement

Part A: Contractor's Offer to Provide Services:
(Prospective Contractor Must Complete)
Contracting Corporation, Partnership OR
Proprietorship

Part B: County Acceptance

MONTGOMERY COUNTY, MARYLAND

Name

David E. Dise, CPPO *Director
Department of General Services

Signature

Date

Typed Name

RECOMMENDATION

Title

R. Keith Compton, Chief
Division of Highway Services

Date

Date

THIS FORM HAS BEEN APPROVED AS TO
FORM AND LEGALITY BY THE OFFICE OF
COUNTY ATTORNEY.

*The County Code, Chapter 11B-1, replaced the definition of Director (of Procurement) with Director of the Department of General Services.

ATTACHMENT A

EQUIPMENT AND RENTAL RATES

TYPE EQUIPMENT	EMERGENCY HOURLY RATE	NON-EMERGENCY RATE
----------------	-----------------------	--------------------

GROUP 1 EQUIPMENT

Heavy Duty Landscape/Single Rear Axle Dump Trucks: 20,000 – 40,000 GVW

with operator	\$85.00	\$65.00
with chains	\$10.00	\$10.00
with push frame and plow	\$25.00	\$25.00
with push frame and articulating plow	\$30.00	\$30.00
with box sander min. 3 cu. yds. to 5 cu. yds.	\$25.00	\$25.00
with box sander 5.01 cu. yd. or larger	\$30.00	\$30.00
with full width tailgate spreader	\$45.00	\$45.00
with road abrasive dispensing conveyor	\$40.00	-----
with leaf collection container 14 to 22 cu. yds.	-----	\$15.00
with leaf collection container 23 cu. yds. plus	-----	\$20.00
with shouldering attachment	-----	\$30.00

*Tandem/Tri-axle rear axle dump truck: 40,001 – 70,000 GVW

with operator	\$100.00	\$75.00
with chains	\$20.00	\$20.00
with push frame and plow	\$25.00	\$25.00
with push frame and articulating plow	\$30.00	\$30.00
with box sander min. 3 cu. yds. to 5 cu. yds.	\$25.00	\$25.00
with box sander 5.01 cu. yd. or larger	\$30.00	\$30.00
with full width tailgate spreader	\$45.00	\$45.00
with road abrasive dispensing conveyor	\$50.00	-----
with leaf collection container 14 to 22 cu. yds.	-----	\$15.00
with leaf collection container 23 cu. yds. plus	-----	\$20.00
with shouldering attachment	-----	\$40.00

Log truck 14' bed with operator	\$90.00	\$70.00
Log truck 14' bed with operator & self loading grapple	\$125.00	\$110.00

Bucket truck 45' Lift or larger with operator	\$110.00	\$80.00
---	----------	---------

Truck/Tractor with Walking Floor Trailer	\$100.00	\$80.00
with shouldering attachment	-----	\$40.00

Gradall with operator	\$160.00	\$115.00
with chains	\$25.00	\$25.00

Bobcat type loader/trailer with operator	\$80.00	\$65.00
with chains	\$15.00	\$15.00
with grapple	\$10.00	\$10.00
with push frame and articulating plow small 6' to 8'	\$10.00	\$10.00
with push frame and articulating plow large 8' plus	\$30.00	\$30.00
with broom	\$10.00	\$10.00
with 36"-40" pavement miller	-----	\$25.00

Wood Chipper (9")	\$35.00	\$25.00
Wood Chipper (12")	\$55.00	\$40.00
Wood Chipper (16")	\$75.00	\$55.00

ATTACHMENT A

Leaf Vacuum large with container, (ODB Model LCT 600,
80hp.) (Tarrant Windy 100 80hp.) or equal

\$35.00

ATTACHMENT A
EQUIPMENT AND RENTAL RATES

GROUP 2 EQUIPMENT

TYPE EQUIPMENT	EMERGENCY HOURLY RATE	NON-EMERGENCY RATE
Backhoe/Loader (1.5 to 2.75 cubic yards) with operator	\$110.00	\$85.00
with chains	\$25.00	\$25.00
with push frame and articulating plow large 8' plus	\$30.00	\$30.00
Backhoe/Loader (2.76 to 5.0 cubic yards) with operator	\$175.00	\$120.00
with chains	\$25.00	\$25.00
with push frame and articulating plow large 8' plus	\$30.00	\$30.00
Loader (above 5.0 cubic yards) with operator	\$270.00	\$205.00
with chains	\$25.00	\$25.00
with push frame and articulating plow large 8' plus	\$30.00	\$30.00
Large Roadway Snow Blower 10' or larger with operator	\$325.00	-----
Grader (9' min. moldboard) with operator	\$200.00	\$130.00
with chains	\$25.00	\$25.00
Track Hoe with operator	\$185.00	\$140.00
Track Loader with operator	\$180.00	\$115.00
Dozer (small) with operator	\$125.00	\$90.00
Dozer (large) with operator	\$200.00	\$130.00
Tub Grinder (10' or 11') with operator	\$250.00	\$200.00
Tub Grinder (12') with operator	\$350.00	\$250.00
Conveyor Tub Grinder with operator (Wood Beast model#3680 or equal)	\$400.00	\$300.00
Replacement Teeth per each	\$15.00	\$15.00
Roadway Stone Distributor with operator(s) 12' or Larger	-----	\$175.00
Static Steel Roller (non-vibrating) 5 to 7 tons with operator	-----	\$70.00
Pneumatic Rubber Tire roller with operator	-----	\$70.00
Roadway Miller with operator(s) and water (Roadtech Model 50 or equal)	-----	Per Day \$4200.00**
Mechanic and service truck	\$145.00	\$110.00
Supervisor, dispatcher, two way radio and cell phone	\$130.00	\$120.00
Labor	\$40.00	\$25.00
One Time Delivery Charge for	\$450.00	\$200.00

ATTACHMENT A

Group 2 Equipment includes Setup and Removal

*Normal operation for trucks will be hauling materials. Surcharge will only be applicable during plowing and/or spreading operations.

NOTE: 1 Standby rate will be equal to 50% of the total operating rate as computed above.

NOTE: 2 Mechanic can not have dual roles as operator or supervisor. Supervisor can not have dual roles as operator or mechanic.

NOTE: 3 Gross vehicle weight determines truck type.

NOTE: 4 The one time delivery charge for Group 2 Equipment is applicable only when equipment/operator is transported by Tractor & Trailer to designated reporting site and is inclusive of operator mobilization cost. The mobilization fee is applicable in all other situations.

** Rate shown for Roadway Miller is Per 8 hr. Day. The County will prorate charges otherwise.

GROUP 3 EQUIPMENT

TYPE EQUIPMENT	EMERGENCY HOURLY RATE
----------------	-----------------------

***Light dump truck, Light Stakebody/Landscape Truck: 10,000 – 20,000 GVW
(excludes all pick-up trucks)

with operator, push frame and stationary plow	\$80.00
with articulating plow	\$10.00
with chains	\$ 5.00
with box sander min. 1.5 cu. yds. to 2.99 cu. yds.	\$15.00
with box sander 3 - 5 cu. yds.	\$25.00
with full width tailgate spreader	\$35.00
with towable road abrasive dispensing conveyor	\$40.00

*** 4 x 4 pickup: 8,500 – 14,000 GVW

with operator, push frame and stationary plow	\$70.00
with articulating plow	\$10.00
with chains	\$ 5.00
with box sander min. 1.5 cu. yds.	\$15.00
with towable road abrasive dispensing conveyor	\$40.00

***Surcharge will only be applicable during plowing and/or spreading operations.

NOTE: 1 Standby rate will be equal to 50% of the total operating rate as computed above.

NOTE: 2 Group III Equipment will be excluded from supervisor and mechanical service required for group I & II.

NOTE: 3 Gross vehicle weight determines truck type expect as noted for pick-up trucks.

ATTACHMENT B

GENERAL CONDITIONS OF CONTRACT BETWEEN COUNTY & CONTRACTOR

1. ACCOUNTING SYSTEM AND AUDIT, ACCURATE INFORMATION

The contractor certifies that all information the contractor has provided or will provide to the County is true and correct and can be relied upon by the County in awarding, modifying, making payments, or taking any other action with respect to this contract including resolving claims and disputes. Any false or misleading information is a ground for the County to terminate this contract for cause and to pursue any other appropriate remedy. The contractor certifies that the contractor's accounting system conforms with generally accepted accounting principles, is sufficient to comply with the contract's budgetary and financial obligations, and is sufficient to produce reliable financial information.

The County may examine the contractor's and any first-tier subcontractor's records to determine and verify compliance with the contract and to resolve or decide any claim or dispute arising under this contract. The contractor and any first-tier subcontractor must grant the County access to these records at all reasonable times during the contract term and for 3 years after final payment. If the contract is supported to any extent with federal or state funds, the appropriate federal or state authorities may also examine these records. The contractor must include the preceding language of this paragraph in all first-tier subcontracts.

2. AMERICANS WITH DISABILITIES ACT

The contractor agrees to comply with the nondiscrimination requirements of Titles II and III, and other provisions, of the Americans with Disabilities Act of 1990, Pub. Law 101-336, as amended, currently found at 42 U.S.C., § 12101, et seq.

3. APPLICABLE LAWS

This contract must be construed in accordance with the laws and regulations of Maryland and Montgomery County. The Montgomery County Procurement Regulations are incorporated by reference into, and made a part of, this contract. In the case of any inconsistency between this contract and the Procurement Regulations, the Procurement Regulations govern. The contractor must, without additional cost to the County, pay any necessary fees and charges, obtain any necessary licenses and permits, and comply with applicable federal, state and local laws, codes and regulations. For purposes of litigation involving this contract, except for contract Disputes discussed in paragraph 8 below, exclusive venue and jurisdiction must be in the Circuit Court for Montgomery County, Maryland or in the District Court of Maryland for Montgomery County.

Furthermore, by signing, or performing work under, a contract for services or arising from a grant award to participate in a County-funded program, contractor expressly certifies and agrees that it will not expend County funds to assist, promote, deter, or otherwise influence union activity or organizing, and that it will comply with the requirements of Montgomery County Code, Section 11B-33B.

4. ASSIGNMENTS AND SUBCONTRACTS

The contractor may not assign or transfer this contract, any interest herein or any claim hereunder, except as expressly authorized in writing by the Director, Office of Procurement. Unless performance is separately and expressly waived in writing by THE DIRECTOR, OFFICE OF PROCUREMENT, an assignment does not release the contractor from responsibility for performance of this contract. Unless otherwise provided in the contract, the contractor may not contract with any other party for furnishing any of the materials or services herein contracted for without the written approval of the Director, Office of Procurement.

5. CHANGES

The Director, Office of Procurement, may unilaterally change the work, materials and services to be performed. The change must be in writing and within the general scope of the contract. The contract will be modified to reflect any time or money adjustment the contractor is entitled to receive. Contractor must bring to the Contract Administrator, in writing, any claim about an adjustment in time or money resulting from a change, within 30 days from the date the Director, Office of Procurement, issued the change in work, or the claim is waived. Any failure to agree upon a time or money adjustment must be resolved under the "Disputes" clause of this contract. The contractor must proceed with the prosecution of the work as changed, even if there is an unresolved claim. No charge for any extra work, time or material will be allowed, except as provided in this section.

6. CONTRACT ADMINISTRATION

A. The contract administrator, subject to paragraph B below, is the Department representative designated by the Director, Office of Procurement, in writing and is authorized to:

- (1) serve as liaison between the County and Contractor;
- (2) give direction to the Contractor to ensure satisfactory and complete performance;
- (3) monitor and inspect the Contractor's performance to ensure acceptable timeliness and quality;
- (4) serve as records custodian for this contract, including wage requirements;
- (5) accept or reject the Contractor's performance;
- (6) furnish timely written notice of the contractor's performance failures to the Director, Office of Procurement and to the County Attorney, as appropriate;
- (7) prepare required reports;
- (8) approve or reject invoices for payment;
- (9) recommend contract modifications or terminations to the Director, Office of Procurement;
- (10) issue notices to proceed; and
- (11) monitor and verify compliance with any MFD Performance Plan.

B. The contract administrator is NOT authorized to make determinations (as opposed to recommendations) that alter, modify, terminate or cancel the contract, interpret ambiguities in contract language, or waive the County's contractual rights.

7. COST & PRICING DATA

Chapter 11B of the County Code and the Montgomery County Procurement Regulations require that cost & pricing data be obtained from proposed awardees/contractors in certain situations. The contractor guarantees that any cost & pricing data provided to the County will be accurate and complete. The contractor grants the Director, Office of Procurement, access to all books, records, documents, and other supporting data in order to permit adequate evaluation of the contractor's proposed price(s). The contractor also agrees that the price to the County, including profit or fee, may, at the option of the County, be reduced to the extent that the price was based on inaccurate, incomplete, or noncurrent data supplied by the contractor.

ATTACHMENT B

8. DISPUTES

Any dispute by Contractor arising under this contract that is not disposed of by agreement must be decided under the Montgomery County Code and the Montgomery County Procurement Regulations. Pending final resolution of a dispute, the Contractor must proceed diligently with contract performance. Subject to subsequent revocation or alteration by the Director, Office of Procurement, the head of the County department, office or agency ("Department Head") of the contract administrator is the designee of the Director, Office of Procurement, for the purpose of dispute resolution. The Department Head, or his/her designee, must forward to the Director, Office of Procurement, a copy of any written resolution of a dispute. The Department Head may, with the contractor's consent, delegate this responsibility to another person (other than the contract administrator). A contractor must notify, in writing, the contract administrator of a claim, and must attempt to resolve a claim with the contract administrator prior to filing a dispute with the Director, Office of Procurement. The contractor waives any dispute or claim not made in writing and received by the Director, Office of Procurement, within 30 days of the event giving rise to the dispute or claim, whether or not the contract administrator has responded to a written notice of claim or resolved the claim. The Director, Office of Procurement, must dismiss a dispute that is not timely filed. A dispute must be in writing, for specific relief, and any requested relief must be fully supported by affidavit of all relevant calculations, including cost and pricing information, records, and other information. At the County's option, the Contractor agrees to be made a party to any related dispute involving another contractor.

9. DOCUMENTS, MATERIALS AND DATA

All documents, materials or data developed as a result of this contract are the County's property. The County has the right to use and reproduce any documents, materials, and data, including confidential information, used in the performance of, or developed as a result of, this contract. The County may use this information for its own purposes, including reporting to state and federal agencies. The contractor warrants that it has title to or right of use of all documents, materials or data used or developed in connection with this contract. The Contractor must keep confidential all documents, materials, and data prepared or developed by the contractor or supplied by the County.

10. DURATION OF OBLIGATION

The contractor agrees that all of contractor's obligations and warranties, including all requirements imposed by the Minority Owned Business Addendum to these General Conditions, if any, which directly or indirectly are intended by their nature or by implication to survive contractor performance, do survive the completion of performance, termination for default, termination for convenience, or termination by mutual consent of the contract.

11. ENTIRE AGREEMENT

There are no promises, terms, conditions, or obligations other than those contained in this contract. This contract supersedes all communications, representations, or agreements, either verbal or written, between the parties hereto, with the exception of express warranties given to induce the County to enter into the contract.

12. ETHICS REQUIREMENTS/ POLITICAL CONTRIBUTIONS

The contractor must comply with the ethics provisions contained in Chapters 11B and 19A, Montgomery County Code, which include the following:

- (a) a prohibition against making or offering to make certain gifts. Section 11B-51(a).
- (b) a prohibition against kickbacks. Section 11B-51(b).
- (c) a prohibition against a person engaged in a procurement from employing or offering to employ a public employee. Section 11B-52 (a).
- (d) a prohibition against a contractor that is providing a recommendation to the County from assisting another party or seeking to obtain an economic benefit beyond payment under the contract. Section 11B-52 (b)
- (e) a restriction on the use of confidential information obtained in performing a contract. Section 11B-52 (c).
- (f) a prohibition against contingent fees. Section 11B-53.

Furthermore, the contractor specifically agrees to comply with County Code Sections 11B-51, 11B-52, 11B-53, 19A-12, and/or 19A-13 .

In addition, the contractor must comply with the political contribution reporting requirements currently codified under Title 14 of Article 33 of the Annotated Code of Maryland.

13. GUARANTEE

- A. Contractor guarantees for one year from acceptance, or for a longer period that is otherwise expressly stated in the County's written solicitation, all goods, services, and construction offered, including those used in the course of providing the goods, services, and/or construction. This includes a guarantee that all products offered (or used in the installation of those products) carry a guarantee against any and all defects for a minimum period of one year from acceptance, or for a longer period stated in the County's written solicitation. The contractor must correct any and all defects in material and/or workmanship that may appear during the guarantee period, or any defects that occur within one (1) year of acceptance even if discovered more than one (1) year after acceptance, by repairing, (or replacing with new items or new materials, if necessary) any such defect at no cost to the County and to the County's satisfaction.
- B. Should a manufacturer's or service provider's warranty or guarantee exceed the requirements stated above, that guarantee or warranty will be the primary one used in the case of defect. Copies of manufacturer's or service provider's warranties must be provided upon request.
- C. All warranties and guarantees must be in effect from the date of acceptance by the County of the goods, services, or construction.
- D. The contractor guarantees that all work shall be accomplished in a workmanlike manner, and the contractor must observe and comply with all Federal, State, County and local laws, ordinances and regulations in providing the goods, and performing the services or construction.
- E. Goods and materials provided under this contract must be of first quality, latest model and of current manufacture, and must not be of such age or so deteriorated as to impair their usefulness or safety. Items that are used, rebuilt, or demonstrator models are unacceptable, unless specifically requested by the County in the Specifications.

14. HAZARDOUS AND TOXIC SUBSTANCES

Manufacturers and distributors are required by federal "Hazard Communication" provisions (29 CFR 1910.1200), and the Maryland "Access to Information About Hazardous and Toxic Substances" Law, to label each hazardous material or chemical container, and to provide Material

ATTACHMENT B

Safety Data Sheets to the purchaser. The contractor must comply with these laws and must provide the County with copies of all relevant documents, including Material Safety Data Sheets, prior to performance of work or contemporaneous with delivery of goods.

15. HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT (HIPAA) COMPLIANCE

In addition to the provisions stated above in Section 3. "Applicable Laws," contractor must comply with all requirements in the federal Health Insurance Portability and Accountability Act (HIPAA), to the extent that HIPAA is applicable to this contract. Furthermore, contractor must enter into the County's standard Business Associate Agreement when contractor or the County, as part of this contract, may use or disclose to one another, to the individual whose health information is at issue, or to a third-party, any protected health information that is obtained from, provided to, made available to, or created by, or for, the contractor or the County.

16. IMMIGRATION REFORM AND CONTROL ACT

The contractor warrants that both the contractor and its subcontractors do not, and shall not, hire, recruit or refer for a fee, for employment under this contract or any subcontract, an alien while knowing the alien is an unauthorized alien, or any individual without complying with the requirements of the federal Immigration and Nationality laws, including any verification and record keeping requirements. The contractor further assures the County that, in accordance with those laws, it does not, and will not, discriminate against an individual with respect to hiring, recruitment, or referral for a fee, of an individual for employment or the discharge of an individual from employment, because of the individual's national origin or, in the case of a citizen or prospective citizen, because of the individual's citizenship status.

17. INCONSISTENT PROVISIONS

Notwithstanding any provisions to the contrary in any contract terms or conditions supplied by the contractor, this General Conditions of Contract document supersedes the contractor's terms and conditions, in the event of any inconsistency.

18. INDEMNIFICATION

The contractor is responsible for any loss, personal injury, death and any other damage (including incidental and consequential) that may be done or suffered by reason of the contractor's negligence or failure to perform any contractual obligations. The contractor must indemnify and save the County harmless from any loss, cost, damage and other expenses, including attorney's fees and litigation expenses, suffered or incurred due to the contractor's negligence or failure to perform any of its contractual obligations. If requested by the County, the contractor must defend the County in any action or suit brought against the County arising out of the contractor's negligence, errors, acts or omissions under this contract. The negligence of any agent, subcontractor or employee of the contractor is deemed to be the negligence of the contractor. For the purposes of this paragraph, County includes its boards, agencies, agents, officials and employees.

19. INDEPENDENT CONTRACTOR

The contractor is an independent contractor. The contractor and the contractor's employees or agents are not agents of the County.

20. INSPECTIONS

The County has the right to monitor, inspect and evaluate or test all supplies, goods, services, or construction called for by the contract at all reasonable places (including the contractor's place of business) and times (including the period of preparation or manufacture).

21. INSURANCE

Prior to contract execution by the County, the proposed awardee/contractor must obtain at its own cost and expense the insurance specified in the applicable table (See Tables A and B) or attachment to these General Conditions, with one or more insurance company(ies) licensed or qualified to do business in the State of Maryland, and acceptable to the County's Division of Risk Management. Contractor must keep this insurance in full force and effect during the term of this contract, including all extensions. Unless expressly provided otherwise, Table A is applicable to this contract. The insurance must be evidenced by one or more Certificate(s) of Insurance and, if requested by the County, the proposed awardee/contractor must provide a copy of any and all insurance policies to the County. At a minimum, the proposed awardee/contractor must submit to the Director, Office of Procurement, one or more Certificate(s) of Insurance prior to award of this contract, and prior to any contract modification extending the term of the contract, as evidence of compliance with this provision. The contractor's insurance must be primary. Montgomery County, MD, including its officials, employees, agents, boards, and agencies, must be named as an additional insured on all liability policies. Forty-five days written notice to the County of cancellation or material change in any of the policies is required. In no event may the insurance coverage be less than that shown on the applicable table, attachment, or contract provision for required insurance. The Director, Office of Procurement, may waive the requirements of this section, in whole or in part.

22. INTELLECTUAL PROPERTY APPROVAL AND INDEMNIFICATION - INFRINGEMENT

If contractor will be preparing, displaying, publicly performing, reproducing, or otherwise using, in any manner or form, any information, document, or material that is subject to a copyright, trademark, patent, or other property or privacy right, then contractor must: obtain all necessary licenses, authorizations, and approvals related to its use; include the County in any approval, authorization, or license related to its use; and indemnify and hold harmless the County related to contractor's alleged infringing or otherwise improper or unauthorized use. Accordingly, the contractor must protect, indemnify, and hold harmless the County from and against all liabilities, actions, damages, claims, demands, judgments, losses, costs, expenses, suits, or actions, and attorneys' fees and the costs of the defense of the County, in any suit, including appeals, based upon or arising out of any allegation of infringement, violation, unauthorized use, or conversion of any patent, copyright, trademark or trade name, license, proprietary right, or other related property or privacy interest in connection with, or as a result of, this contract or the performance by the contractor of any of its activities or obligations under this contract.

23. NON-CONVICTION OF BRIBERY

The contractor hereby declares and affirms that, to its best knowledge, none of its officers, directors, or partners or employees directly involved in obtaining contracts has been convicted of bribery, attempted bribery, or conspiracy to bribe under any federal, state, or local law.

24. NON-DISCRIMINATION IN EMPLOYMENT

The contractor agrees to comply with the non-discrimination in employment policies and/ or provisions prohibiting unlawful employment practices in County contracts as required by Section 11B-33 and Section 27-19 of the Montgomery County Code, as well as all other applicable state and federal laws and regulations regarding employment discrimination.

The contractor assures the County that, in accordance with applicable law, it does not, and agrees that it will not, discriminate in any manner on the basis of race, color, religious creed, ancestry, national origin, age, sex, marital status, disability, or sexual orientation. The contractor must bind its subcontractors to the provisions of this section.

ATTACHMENT B

TABLE A. - INSURANCE REQUIREMENTS

(See Paragraph #21 Under the General Conditions of Contract Between County and Contractor)

CONTRACT DOLLAR VALUES (IN \$1,000's)

	<u>Up to 50</u>	<u>Up to 100</u>	<u>Up to 1,000</u>	<u>Over 1,000</u>
Workers Compensation (for contractors with employees)				

Bodily Injury by

Accident (each)	100	100	100	See Attachment
Disease (policy limits)	500	500	500	
Disease (each employee)	100	100	100	
Commercial General Liability minimum combined single limit for bodily injury and property damage per occurrence, including contractual liability, premises and operations, and independent contractors	300	500	1,000	See Attachment
Minimum Automobile Liability (including owned, hired and non-owned automobiles)				
Bodily Injury each person	100	250	500	See Attachment
each occurrence	300	500	1,000	
Property Damage each occurrence	300	300	300	
Professional Liability* for errors, omissions and negligent acts, per claim and aggregate, with one year discovery period and maximum deductible of \$25,000	250	500	1,000	See Attachment

Certificate Holder
Montgomery County Maryland (Contract #)
Office of Procurement
Rockville Center
255 Rockville Pike, Suite 180
Rockville, Maryland 20850-4166

*Professional services contracts only

[Remainder of Page Intentionally Left Blank]

ATTACHMENT B

TABLE B. - INSURANCE REQUIREMENTS

(See Paragraph #21 Under the General Conditions of Contract Between County and Contractor)

	<u>Up to 50</u>	<u>Up to 100</u>	<u>Up to 1,000</u>	<u>Over 1,000</u>
Commercial General Liability minimum combined single limit for bodily injury and property damage per occurrence, including contractual liability, premises and operations, independent contractors, and product liability	300	500	1,000	See Attachment

Certificate Holder
Montgomery County Maryland (Contract #)
Office of Procurement
Rockville Center
255 Rockville Pike, Suite 180
Rockville, Maryland 20850-4166

[Remainder of Page Intentionally Left Blank]

ATTACHMENT B

25. PAYMENTS

No payment by the County may be made, or is due, under this contract, unless funds for the payment have been appropriated and encumbered by the County. Under no circumstances will the County pay the contractor for legal fees. The contractor must not proceed to perform any work (provide goods, services, or construction) prior to receiving written confirmation that the County has appropriated and encumbered funds for that work. If the contractor fails to obtain this verification from the Office of Procurement prior to performing work, the County has no obligation to pay the contractor for the work.

If this contract provides for an additional contract term for contractor performance beyond its initial term, continuation of contractor's performance under this contract beyond the initial term is contingent upon, and subject to, the appropriation of funds and encumbrance of those appropriated funds for payments under this contract. If funds are not appropriated and encumbered to support continued contractor performance in a subsequent fiscal period, contractor's performance must end without further notice from, or cost to, the County. The contractor acknowledges that the County Executive has no obligation to recommend, and the County Council has no obligation to appropriate, funds for this contract in subsequent fiscal years. Furthermore, the County has no obligation to encumber funds to this contract in subsequent fiscal years, even if appropriated funds may be available. Accordingly, for each subsequent contract term, the contractor must not undertake any performance under this contract until the contractor receives a purchase order or contract amendment from the County that authorizes the contractor to perform work for the next contract term.

26. PERSONAL PROPERTY

All furniture, office equipment, equipment, vehicles, and other similar types of personal property specified in the contract, and purchased with funds provided under the contract, become the property of the County upon the end of the contract term, or upon termination or expiration of this contract, unless expressly stated otherwise.

27. TERMINATION FOR DEFAULT

The Director, Office of Procurement, may terminate the contract in whole or in part, and from time to time, whenever the Director, Office of Procurement, determines that the contractor is:

- (a) defaulting in performance or is not complying with any provision of this contract;
- (b) failing to make satisfactory progress in the prosecution of the contract; or
- (c) endangering the performance of this contract.

The Director, Office of Procurement, will provide the contractor with a written notice to cure the default. The termination for default is effective on the date specified in the County's written notice. However, if the County determines that default contributes to the curtailment of an essential service or poses an immediate threat to life, health, or property, the County may terminate the contract immediately upon issuing oral or written notice to the contractor without any prior notice or opportunity to cure. In addition to any other remedies provided by law or the contract, the contractor must compensate the County for additional costs that foreseeably would be incurred by the County, whether the costs are actually incurred or not, to obtain substitute performance. A termination for default is a termination for convenience if the termination for default is later found to be without justification.

28. TERMINATION FOR CONVENIENCE

This contract may be terminated by the County, in whole or in part, upon written notice to the contractor, when the County determines this to be in its best interest. The termination for convenience is effective on the date specified in the County's written notice. Termination for convenience may entitle the contractor to payment for reasonable costs allocable to the contract for work or costs incurred by the contractor up to the date of termination. The contractor must not be paid compensation as a result of a termination for convenience that exceeds the amount encumbered to pay for work to be performed under the contract.

29. TIME

Time is of the essence.

30. WORK UNDER THE CONTRACT

Work may not commence under this contract until all conditions for commencement are met, including execution of the contract by both parties, compliance with insurance requirements, encumbrance of funds, and issuance of any required notice to proceed.

THIS FORM MAY NOT BE MODIFIED WITHOUT THE PRIOR APPROVAL OF THE OFFICE OF THE COUNTY ATTORNEY. PMMD-45. REVISED 01/06/05

ATTACHMENT C

MANDATORY INSURANCE REQUIREMENTS – Open Solicitation # 8506010002

Road Equipment Services - Supply Equipment and Personnel at Rental Rates

Prior to the execution of the contract by the County, the proposed awardee must obtain at their own cost and expense the following insurance with an insurance company/companies licensed to do business in the State of Maryland and acceptable to the Division of Risk Management. This insurance must be kept in full force and effect during the term of this contract, including all extensions. The insurance must be evidenced by a certificate of insurance, and if requested by the County, the proposed awardee/Contractor shall provide a copy of the insurance policies. The Contractor's insurance shall be primary.

Commercial General Liability

A minimum limit of liability of ***one million dollars (\$1,000,000)***, combined single limit, for bodily injury and property damage coverage per occurrence including the following coverages:

- Contractual Liability
- Premises and Operations
- Independent Contractors
- Products and Completed Operations

Automobile Liability Coverage

A minimum limit of liability of ***one million dollars (\$1,000,000)***, combined single limit, for bodily injury and property damage coverage per occurrence including the following:

- owned automobiles
- hired automobiles
- non-owned automobiles

Workers' Compensation/Employer's Liability

Meeting all statutory requirements of the State of Maryland Law and with the following minimum Employers' Liability limits:

- Bodily Injury by Accident - \$100,000 each accident***
- Bodily Injury by Disease - \$500,000 policy limits***
- Bodily Injury by Disease - \$100,000 each employee***

Additional Insured

Montgomery County, Maryland, its elected and appointed officials, officers, consultants, agents and employees must be named as an additional insured on Contractor's Commercial and Excess/Umbrella Insurance for liability arising out of contractor's products, goods and services provided under this contract.

Policy Cancellation

Forty-five (45) days written notice of cancellation or material change of any of the policies is required.

Certificate Holder

Montgomery County, Maryland
DOT / Division of Highway Services/ Lew Cutsail
101 Orchard Ridge Drive, 2nd floor
Gaithersburg, Maryland 20878

ATTACHMENT D
MINORITY BUSINESS PROGRAM & OFFEROR'S REPRESENTATION

It is the policy of the County to recruit actively, minority-owned businesses to provide goods and services to perform governmental functions pursuant to Section 11B-57 of the County Code. Minority-owned businesses are described in County law as Minority/Female/Disabled Person owned businesses (MFD). MFD businesses include certain non-profit entities organized to promote the interests of persons with a disability demonstrating (on a contract by contract basis) that at least 51% of the persons used by the non-profit entity to perform the services or manufacture the goods contracted for by the County, are persons with a disability. MFD firms also include those firms that are 51% owned, controlled and managed by one or more members of a socially or economically disadvantaged minority group, which include African Americans who are not of Hispanic origin, Hispanic Americans, Native Americans, Asian Americans, Women and Mentally or Physically Disabled Persons.

Section 7 - "Minority Contracting", Montgomery County Procurement Regulations specifies the procedure to be followed and will govern the evaluation of offers received pursuant to this solicitation. A copy of Section 7 of the Procurement Regulations is available upon request.

Prior to awarding contracts with a value of \$50,000 or more, a prospective Contractor (who is not a certified MFD firm) must demonstrate that a minimum percentage of the overall contract value as set by the County, will be subcontracted to certified MFD businesses. A decision as to whether the prospective Contractor has demonstrated a good faith effort to meet this subcontracting requirement will be made by the Director, Office of Procurement or his/her designee, who may waive this requirement.

A sample of the MFD Report of payment Received is attached. This form is mailed to the MFD Subcontractor to complete for documentation of payment by the Prime Contractor. It is not to be completed by the Prime Contractor nor submitted with the MFD Subcontractor Performance Plan.

The Director, Office of Procurement, or his /her designee determines whether a waiver of MFD subcontracting would be appropriate, under Section 7.3.3.5 of the Procurement Regulations.

For further information regarding the MFD Business Program, please contact the Minority Procurement Office at (240) 777-9912

Offerors are encouraged (but not required) to complete the following:

I hereby represent that this firm (CIRCLE ONE) IS or IS NOT

a Minority Business firm as indicated below (CIRCLE ONE):

AFRICAN AMERICAN	HISPANIC AMERICAN	NATIVE AMERICAN
ASIAN AMERICAN	FEMALE	DISABLED PERSON

Indicate Maryland Department of Transportation (MDOT) or SBA 8(a) certification # _____
(Attach your MDOT or SBA 8(a) certification documentation)



Montgomery County
Office Of Procurement
Office Of The Director

MFD Report Of Payments Received For Office Use

SAMPLE ONLY! NOT TO BE USED BY PRIME

MFD Subcontractor Company Name: _____

Prime Contractor Company Name: _____

Contract Number/Title: _____

Project Location: _____

MFD Subcontract Amount: \$: _____

PLEASE READ CAREFULLY BEFORE SIGNING

This certifies that for the month of _____, my company received \$ _____
for work performed, services rendered and/or materials supplied on the above contract.

TOTAL AMOUNT OF SUBMITTED INVOICES TO DATE: \$ _____

TOTAL PAYMENTS RECEIVED TO DATE: \$ _____

Are you experiencing any contract problems with the prime contractor and/or the project? Yes ___ No ___
Comments: _____

I certify that the above information is true and accurate to the best of my record documentation and knowledge.

(TYPED/PRINTED COMPANY NAME)

(TYPED/PRINTED NAME OF COMPANY OFFICIAL)

(TITLE)

(SIGNATURE OF COMPANY OFFICIAL)

(DATE)

TELEPHONE

FAX

E-MAIL

Mail to: Alvin Boss, Program Specialist II
255 Rockville Pike (formerly 250 Hungerford Drive)
Ste. 180 Rockville, MD 20850

Minority-Owned Business Addendum to General Conditions of Contract Between County and Contractor

- A. This contract is subject to the Montgomery County Code and the Montgomery County Procurement Regulations regarding participation in the Minority-Female-Disabled Person (MFD) procurement program.
- B. Contractor must subcontract a percentage of the total dollar value of the contract, including all modifications and renewals, to certified minority owned businesses. The MFD subcontracting goal may be waived under appropriate circumstances by submission of a letter to the Minority Procurement Officer. The letter must explain why a waiver is appropriate. The Director of Procurement or designee may waive, in whole or in part, the MFD subcontracting goal if the Director determines that a waiver is appropriate under Section 7.3.3.5 of the Montgomery County Procurement Regulations. In determining if a waiver should be granted, the Director may require the Contractor to submit additional information; the Director may require the Contractor to submit some or all of this information on forms approved by the Director.
- C. The attached MFD Subcontractor Performance Plan, which must be approved by the Director, is an integral part of the contract between County and Contractor. In a multi-term contract, Contractor must submit a MFD Subcontract Performance Plan to be in effect for the life of the contract, including any renewal or modification.
- D. Contractor must include in each subcontract with a minority owned business a provision that requires the use of binding arbitration with a neutral arbitrator to resolve disputes between the Contractor and the minority owned business subcontractor. This arbitration provision must describe how the cost of dispute resolution will be apportioned; the apportionment must not, in the judgment of the Director, attempt to penalize a minority owned business subcontractor for filing an arbitration claim.
- E. County approval of the MFD Subcontractor Performance Plan does not create a contractual relationship between the County and the minority owned business subcontractor.
- F. Contractor must notify and obtain prior written approval from the Director regarding any change in the MFD Subcontractor Performance Plan.
- G. Before receiving final payment under this contract, Contractor must submit documentation showing compliance with the MFD Subcontracting Performance Plan. Documentation may include, at the direction of the Director, invoices, copies of subcontracts with minority owned businesses, cancelled checks, affidavits executed by minority owned business subcontractors, waivers, and arbitration decisions. The Director may require Contractor to submit periodic reports on a form approved by the Director. The Director may conduct an on-site inspection for the purpose of determining compliance with the MFD Subcontractor Performance Plan. If this is a multi-term contract, final payment means the final payment due for performance rendered for each term of the contract.
- H. If the Contractor fails to submit documentation demonstrating compliance with the MFD Subcontractor Performance Plan, to the satisfaction of the Director, after considering relevant waivers and arbitration decisions, the Contractor is in breach of this contract. In the event of a breach of contract under this addendum, the Contractor must pay to the County liquidated damages equal to the difference between all amounts the Contractor has agreed under its Plan to pay minority owned business subcontractors and all amounts actually paid minority owned business subcontractors with appropriate credit given for any relevant waiver or arbitration decision. Contractor and County acknowledge that damages which would result to the County as a result of a breach under this addendum are difficult to ascertain, and that the liquidated damages provided for in this addendum are fair and reasonable in estimating the damage to the County of a breach of this addendum by Contractor. In addition, the County may terminate the contract. As the result of a breach under this addendum, The Director of Procurement must find the Contractor non-responsible for purposes of future procurement with the County for the ensuing three years.

**MINORITY, FEMALE, DISABLED PERSON SUBCONTRACTOR
PERFORMANCE PLAN**

Contractor's Name: _____

Address: _____

City: _____ State: _____ Zip Code: _____

Phone Number: _____ **Fax Number:** _____ **E-mail:** _____

CONTRACT NUMBER/PROJECT DESCRIPTION: _____

A. Individual designated by Contractor to monitor Contractor's compliance with MFD Subcontractor Performance Plan:

Name: _____

Title: _____

Address: _____

City: _____ State: _____ Zip Code: _____

Phone Number: _____ Fax Number: _____ E-mail: _____

B. This Plan covers life of the contract from contract execution through final contract expiration date.

C. The percentage of total contract dollars, including modifications and renewals, to be paid to all certified minority owned business subcontractors, is _____% of the total dollars awarded to Contractor.

D. Each of the following certified minority owned businesses will be paid the percentage of total contract dollars indicated below as a subcontractor under the contract.

All listed MFD subcontractors are required to be Maryland Department of Transportation (MDOT) certified or SBA 8(a) certified. For assistance, please call (240) 777-9912.

I hereby certify that the business(es) listed below are Maryland Department of Transportation (MDOT) certified or SBA 8(a) certified.

1. Certified Minority Owned
Business Subcontractor Name: _____

Address: _____

City: _____ State: _____ Zip Code: _____

Phone Number: _____ **Fax Number:** _____ **E-mail:** _____

CONTACT PERSON:

MDOT or SBA 8(a) Certification Number: _____

Attach your MDOT or SBA 8(a) certification documents.

Circle MFD Type:

AFRICAN AMERICAN
NATIVE AMERICAN

ASIAN AMERICAN
FEMALE

HISPANIC AMERICAN
DISABLED PERSON

The percentage of total contract dollars to be paid to this subcontractor is _____

This subcontractor will provide the following goods and/or services: _____

2. Certified Minority Owned

Business Subcontractor Name: _____

Address: _____

City: _____ State: _____ Zip Code: _____

Phone Number: _____ Fax Number: _____ E-mail: _____

CONTACT PERSON:

MDOT or SBA 8(a) Certification Number: _____

Attach your MDOT or SBA 8(a) certification documents.

Circle MFD Type:

AFRICAN AMERICAN

ASIAN AMERICAN

HISPANIC AMERICAN

NATIVE AMERICAN

FEMALE

DISABLED PERSON

The percentage of total contract dollars to be paid to this subcontractor is _____

This subcontractor will provide the following goods and/or services: _____

3. Certified Minority Owned

Business Subcontractor Name: _____

Address: _____

City: _____ State: _____ Zip Code: _____

Phone Number: _____ Fax Number: _____ E-mail: _____

CONTACT PERSON:

MDOT or SBA 8(a) Certification Number: _____

Attach your MDOT or SBA 8(a) certification documents.

Circle MFD Type:

AFRICAN AMERICAN

ASIAN AMERICAN

HISPANIC AMERICAN

NATIVE AMERICAN

FEMALE

DISABLED PERSON

The percentage of total contract dollars to be paid to this subcontractor is _____

This subcontractor will provide the following goods and/or services: _____

4. Certified Minority Owned

Business Subcontractor Name: _____

Address: _____

City: _____ State: _____ Zip Code: _____

Phone Number:

Fax Number:

E-mail:

CONTACT PERSON:

MDOT or SBA 8(a) Certification Number: _____
Attach your MDOT or SBA 8(a) certification documents.

Circle MFD Type:

AFRICAN AMERICAN
NATIVE AMERICAN

ASIAN AMERICAN
FEMALE

HISPANIC AMERICAN
DISABLED PERSON

The percentage of total contract dollars to be paid to this subcontractor is _____

This subcontractor will provide the following goods and/or services: _____

E. The following language will be inserted in each subcontract with a certified minority owned business listed in D above, regarding the use of binding arbitration with a neutral arbitrator to resolve disputes with the minority owned business subcontractor; the language must describe how the costs of dispute resolution will be apportioned:

F. The Contractor applies for the following full or partial waiver; specify the basis for the waiver request:

Full Waiver Approved:

Partial Waiver Approved:

Minority Procurement Officer Date _____

Minority Procurement Officer Date _____

Full Waiver Approved:

Partial Waiver Approved:

Director Office of Procurement Date _____

Director Office of Procurement Date _____

The Contractor submits this MFD Subcontractor Performance Plan (Plan Modification No. _____)
in accordance with the Minority Owned Business Addendum to General Conditions of Contract
between County and Contractor.

CONTRACTOR SIGNATURE

USE ONE:

1. TYPE CONTRACTOR'S NAME: _____

Signature

Typed Name

Date

2. TYPE CORPORATE CONTRACTOR'S NAME: _____

Signature

Typed Name

Title

Date

I hereby affirm that the above named person is a corporate officer or a designee empowered to sign
contractual agreements for the corporation.

Signature

Typed Name

Title

Date

APPROVED:

Director of Procurement

Date

7.3.3.4(a) of the Procurement Regulations requires:

**The contract between the Contractor and the County requires the Contractor to notify the Director of
Procurement of any proposed change to the Subcontractor Performance Plan.**

ATTACHMENT E

Wage Requirements for Services Contract Addendum to The General Conditions of Contract Between County and Contractor

- A. This contract is subject to the wage requirements of Section 11B-33A of the Montgomery County Code. A County contract for the procurement of services must require the contractor and any of its subcontractors to comply with the wage requirements of this Section, subject to exceptions from coverage for particular contractors noted in 11B-33A(b) and for particular employees noted in 11B-33A(f).
- B. Conflicting requirements (11B-33A(g)): If any federal, state, or County law or regulation requires payment of a higher wage, that law or regulation controls. If any applicable collective bargaining agreement requires payment of a higher wage, that agreement controls.
- C. Nonprofit organizations who are exempt from the wage requirements under 11B-33A must specify the wage the organization intends to pay to those employees who will perform direct, measurable work under the contract, and any health insurance the organization intends to provide to those employees.
- D. A contractor must not split or subdivide a contract, pay an employee through a third party, or treat an employee as a subcontractor or independent contractor, to avoid the imposition of any requirements in 11B-33A.
- E. Each contractor and subcontractor covered under 11B-33A must: certify that it is aware of and will comply with the applicable wage requirements; keep and submit any verifiable records necessary to show compliance; and conspicuously post notices informing employees of the wage requirements, and send a copy of each such notice to the County's Director of Procurement.
- F. An employer must comply with Section 11B-33A during the initial term of the contract and all subsequent renewal periods and must pay an increase adjustment in this wage rate, if any, automatically effective July 1 of each year. The County will adjust the wage rate by the annual average increase in the Consumer Price Index for all urban consumers for the Washington-Baltimore metropolitan area, or successor index, for the previous calendar year and must calculate the adjustment to the nearest multiple of 5 cents.
- G. An employer must not discharge or otherwise retaliate against an employee for asserting any right or filing a complaint of a violation, under the wage requirements.
- H. The sanctions under Section 11B-33(b), that apply to noncompliance with nondiscrimination requirements, apply with equal force and scope to noncompliance with the wage requirements under 11B-33A.
- I. The County may assess liquidated damages for any noncompliance by contractor with the Section 11B-33A wage requirements at the rate of 1% per day of the total contract amount, or for a requirements contract, the estimated annual contract value, for each day of the violation. This liquidated damages amount includes the amount of any unpaid wages, with interest. In the event of a breach of contract under this paragraph, the Contractor must pay to the County liquidated damages noted above, in addition to any other remedies available to the County. Contractor and County acknowledge that damages that would result to the County as a result of a breach under this paragraph are difficult to ascertain, and that the liquidated damages provided for in this paragraph are fair and reasonable in estimating the damage to the County resulting from a breach of this paragraph by Contractor. In addition, the contractor is jointly and severally liable for any noncompliance by a subcontractor. Furthermore, Contractor agrees that an aggrieved employee, as a third-party beneficiary, may by civil action enforce the payment of wages due under the Section 11B-33A wage requirements and recover from Contractor any unpaid wages with interest, a reasonable attorney's fee, and damages for any retaliation for asserting any right or claim under the 11B-33A wage requirements.
- J. The Director may conduct random audits to assure compliance with Section 11B-33A. The Director may conduct an on-site inspection(s) for the purpose of determining compliance.
- K. If the Contractor fails, upon request by the Director, to submit documentation demonstrating compliance with Section 11B-33A to the satisfaction of the Director, the Contractor is in breach of this contract. In the event of a breach of contract under this paragraph, the Contractor must pay to the County liquidated damages noted in paragraph I. above, in addition to any other remedies available to the County. Contractor and County acknowledge that damages that would result to the County as a result of a breach under this paragraph are difficult to ascertain, and that the liquidated damages provided for in this paragraph are fair and reasonable in estimating the damage to the County resulting from a breach of this paragraph by Contractor.

Wage Requirements Certification (Montgomery County Code, Section 11B-33A)

Business Name					
Address					
City		State		Zip Code	
Phone Number		Fax Number		E-Mail	

Please provide in the spaces below the contact name and information of the individual designated by your firm to monitor your compliance with the County's wage requirements, unless exempt under Section 11B-33A(b) (see item B below):

Contact Name			Title		
Phone Number		Fax Number		E-Mail	

MUST CHECK ☒ ALL APPROPRIATE BOXES BELOW that apply in the event that you, as an "Offeror," are awarded the contract and become a "Contractor":

Wage Requirements Compliance

- A. ☐ This Contractor as a "covered employer" will comply with the requirements under Section 11B-33A, Wage Requirements. Contractor will pay all employees not exempt under the wage requirements, and who perform direct measurable work for the County, the wage requirements effective at the time the work is performed. The bid price(s) submitted under this solicitation include(s) sufficient funds to meet the wage requirements.

Exemption Status (if applicable)

B. This Contractor is exempt from 11B-33A, "Wage Requirements," because it is:

- ☐ 1. a contractor who employs fewer than 10 employees when the contractor submits a bid or proposal, and will continue to be exempt as long as contractor does not employ 10 or more employees at any time the contract is in effect as a result of performing the contract. Section 11B-33A(b)(1).
- ☐ 2. a contractor who, at the time a contract is signed: has received less than \$50,000 from the County in the most recent 12-month period; and will be entitled to receive less than \$50,000 from the County under that contract in the next 12-month period. Section 11B-33A(b)(2).
- ☐ 3. a contract with a public entity. Section 11B-33A(b)(3).
- ☐ 4. a contract with a nonprofit organization that has qualified for an exemption from federal income taxes under Section 501(c)(3) of the Internal Revenue Code. Section 11B-33A(b)(4) (must complete item C below).
- ☐ 5. an employer to the extent that the employer is expressly precluded from complying with this Section by the terms of any federal or state law, contract, or grant. Section 11B-33A(b)(8) (must specify the law, or furnish a copy of the contract or grant).

Nonprofit Wage & Health Information (Must complete and submit wage and health insurance form)

- C. ☐ This Contractor is a Nonprofit organization that is exempt from coverage under Section 11B-33A(b)(4). Accordingly, the contractor has completed the 501(c)(3) Nonprofit Organization's Employee's Wage and Health Insurance Form, that is attached. See Section 11B-33A(c)(2).

Nonprofit's Comparison Price(s)

- D. ☐ This Contractor is a Nonprofit organization that is opting to pay its covered employees the hourly rate specified in the wage requirements. Accordingly, Contractor is duplicating the blank quotation sheet on which it is submitting its price(s) in the IFB, and is submitting on this duplicate form its price(s) to the County had it not opted to pay its employees the hourly rate specified in the wage requirements. For bid evaluation purposes, this price(s) will be compared to price(s) of another Nonprofit organization(s) that is paying its employees an amount consistent with its exemption from paying the hourly rate under the wage requirements. This revised information on the duplicate quotation sheet must be clearly marked as your Nonprofit organization comparison price(s). In order to compare your price(s), the revised information on the duplicate quotation sheet must be submitted with your bid, must show how the difference between your price(s) and your Nonprofit organization comparison price(s) was calculated, and will not be accepted after the bid opening date. See Section 11B-33A(c)(2).

Wage Requirements Reduction

E. ☐ This Contractor is a "covered employer," and it desires to reduce its hourly rate paid under the wage requirements by an amount equal to, or less than, the per employee hourly cost of the employer's share of the health insurance premium. Contractor certifies that the per employee hourly cost of the employer's share of the premium for that insurance is: \$ _____. See Section 11B-33A(d).

Contractor Certification

CONTRACTOR SIGNATURE: Contractor submits this certification form in accordance with Section 11B-33A of the Montgomery County Code. Contractor certifies that it, and any and all of its subcontractors that perform services under the resultant contract with the County, adheres to Section 11B-33A of the Montgomery County Code.

Authorized Corporate, Partner, or Proprietor Signature		Typed Name of Signature	
Title of Authorized Person		Date	

501(c)(3) Nonprofit Organization's Employee's Wage and Health Insurance Form

Business Name					
Address					
City		State		Zip Code	
Phone Number		Fax Number		E-Mail	

Please provide below the employee labor category of all employee(s) who will perform direct measurable work under this contract, the hourly wage the organization pays for that employee labor category, and any health insurance the organization intends to provide for that employee labor category:

[illegible]

- IF NO HEALTH INSURANCE PLAN IS PROVIDED PLEASE STATE "NONE".